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RECORD, CASE NO. 14629.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM NO. 1157.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM WILSON.

APPEAL FROM THE COURT OF CLAIMS.

FILED MAY 8, 1891.

RECORD, CASE NO. 14629.

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INDEX.

	Original.	Print.
Petition filed April 25, 1890	1	1
Traverse filed May 3, 1890	3	2
Findings of fact and conclusion of law filed February 24, 1891	4	2
Opinion of the court, February 24, 1891	5	3
Judgment of the court	6	5
Application of defendants for and allowance of appeal	7	5
Certificate	8	6

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1 IN THE COURT OF CLAIMS.

WILLIAM WILSON
vs.
THE UNITED STATES. } 16747.

I.—*Petition filed April* 25, 1890.

In the Court of Claims.—December term, 1889.—Filed April 25, 1890.—J. R.

WILLIAM WILSON
vs.
THE UNITED STATES. } No. 16747.

PETITION.

The petition of William Wilson, a citizen of the United States, states that prior to July 1, 1885, he was appointed and commissioned and duly qualified, under the laws of the United States, a postmaster at Chadron, Nebraska, and that he entered upon the discharge of the duties of his said office prior to that date, and that he thereafter discharged fully all the duties of his said office up to and including the 31st day of March, 1887; that his compensation as such postmaster for the four quarters between July 1, 1885, and July 1, 1886, reached the sum of $250 for each quarter, exclusive of commissions on money-order business, and that his quarterly returns to the auditor for the said four consecutive quarters showed petitioner to be entitled to a compensation in excess of $250 per quarter, and the auditor at the beginning of the third quarter of 1886 reported such fact to the Postmaster-General, and the Postmaster-General thereupon assigned petitioner's office to its proper class and fixed the salary of

2 his said office, as provided by section 1 of chapter 142 of the laws of 1883, at $1,600 per year, from October 1, 1886, and petitioner shows that for the discharge of the duties of his said office from October 1, 1886, to March 31, 1887, he is entitled to be paid a salary of $800 by the United States, and that he has been paid by the United States on account of said salary $500 and no more, and petitioner prays judgment of this honorable court against the United States for the sum of $300.

HARVEY SPALDING,
Claimant's Attorney.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

Harvey Spalding, of said county, having been duly sworn, deposes and says that he is the attorney for the above-named claimant; that no assignment or transfer of said claim, or any part thereof or any interest therein, has been made, except as in said petition stated; that said claimant is justly entitled to the amount therein claimed from the United States, as deponent verily believes, after allowing all just credits and offsets, and he verily believes that the facts stated in said petition are true.

HARVEY SPALDING.

Subscribed and sworn to before me this 23d day of April, 1890.
[SEAL.] FRANK B. MARLOW,
Notary Public.

Claimant's address: Chadron, Nebraska.

HARVEY SPALDING,
Claimant's Attorney, Washington, D. C.

3 II.—*General traverse.*

In the Court of Claims of the United States.—December term, A. D. 1889.

WILLIAM WILSON
vs.
THE UNITED STATES. } No. 16747.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

JOHN B. COTTON,
Assistant Attorney-General.

4 COURT OF CLAIMS NO. 16747.

WILLIAM WILSON *v.* THE UNITED STATES.

III.—*Findings of fact.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

The claimant, William Wilson, was a postmaster of class four appointed by the Postmaster-General and duly qualified at Chadron, Nebr., and served as such from July 1, 1885, to January 25, 1887.

January 25, 1887, he was nominated by the President, confirmed by the Senate, and duly commissioned as postmaster of class three.

II.

From October 1, 1886, to January 25, 1887, he was paid at the rate of $1,000 a year, and after that date at the rate of $1,600 a year.

III.

For the four quarters between July 1, 1885, and July 1, 1886, he made returns to the auditor showing gross receipts amounting to $4,912.99, of which $338.50 was from box rent.

IV.

The auditor thereupon reported this fact to the Postmaster-General, with a statement showing that the claimant would be entitled, upon these returns, to commissions and box rents amounting to $2,150.85 for the four quarters, being at the rate of $537.71 per quarter.

V.

Thereupon, in the office of the First Assistant Postmaster-General, the following order and entries were made:

"OFFICE OF THE FIRST ASS'T P. M. GENERAL,
"SALARY AND ALLOWANCE DIVISION,
"*August* 27, 1886.

"*Chadron, Neb., Dawes Co.—Brief.*

"Auditor reports postmaster's compensation, exclusive of money-order commissions, as having reached $250 for four consecutive quarters.

"*Ordered*, That the post-office at Chadron, Neb., be assigned to the third class, and the salary of the postmaster fixed at $1,600 a year, from October 1, 1886.

"A. E. STEVENSON,
"*First Ass't P. M. General.*

"Sept. 27, '86. Wrote P. M. and Auditor."

VI.

November 16, 1886, an order was issued by the Sixth Auditor, by which postmasters at post-offices changed from fourth class to first, second, or third class, were allowed the salary and emoluments of offices of those grades from the date of commission by the President, instead of from the date fixed by the Postmaster-General as that upon which the change of classification should take effect.

Prior to that date the increased salary was paid from the date of the change of the classification.

CONCLUSION OF LAW.

Upon the foregoing finding of facts the court decides as conclusion of law that the claimant is entitled to recover in the sum of $190.

5 IV.—*Opinion.*

Scofield, J., delivered the opinion of the court:

The claimant was appointed by the Postmaster-General a fourth-class postmaster at Chadron, Nebr., and served as such from July 1, 1885, to January 25, 1887. At the latter date he was commissioned by the President a third-class postmaster at the same place.

From October 1, 1886, to January 25, 1887, he was paid a salary at the rate of $1,000 a year. He now claims that he should have been paid at the rate of $1,600 a year. This would entitle him to $190 additional.

The claim is based upon the proviso to section 2 of the act of March 3, 1883, (22 Stat., 602), and upon section 3 of the same act, which reads as follows:

"Provided, That when the compensation of any postmaster of this class shall reach $250 for four consecutive quarters each, exclusive of commis-

sions on money-order business, and when his returns to the auditor for four consecutive quarters shall show him to be entitled to a compensation in excess of $250 per quarter, the auditor shall report such fact to the Postmaster-General, who shall assign the office to its proper class and fix the salary of the postmaster as provided by section 1 of this act.

"SEC. III. That the Postmaster-General shall make all orders relative to the salaries of postmasters, and any change made in such salaries shall not take effect until the first day of the quarter next following the order, and the auditor shall be notified of any and all changes of salaries."

All the requirements of this proviso were found in favor of the claimant, and the auditor so reported to the Postmaster-General. August 27, 1886, the Postmaster-General assigned this office to the third class and fixed the salary of the postmaster at $1,600 a year from October 1, 1886.

It thus appears that this post-office was prospectively withdrawn from the fourth class and placed in the third, and the salary raised from $1,000 to $1,600 a year, to take effect on the 1st day of October following. All this was done in strict conformity to the statute above cited.

This law and the proceedings under it seem to sustain the claimant's contention. To avoid this conclusion the counsel for the defendants cites section 6 of the act of July 12, 1876 (19 Stat., 80), as follows:

"Postmasters of the first, second, and third classes shall be appointed and may be removed by the President by and with the advice and consent of the Senate, and shall hold their offices for four years, unless sooner removed or suspended according to law; and postmasters of the fourth class shall be appointed and may be removed by the Postmaster-General."

It is contended that the act of 1883, taken in connection with the act of 1876, only provides a mode of transferring a fourth-class post-office to the third class, and of fixing the salary to be attached thereto. All this was provided for by the then existing law. If therefore the incumbent of the office was not to be benefited, the necessity of the enactment is not apparent. Counsel for the defendants in support of his construction of the law cites Postal Regulations, section 258, as follows:

"The change and classification from an office of the fourth class to third class takes effect upon the assumption of the duties by a postmaster appointed and commissioned by the President, and until such postmaster takes charge the daily reports of cancellation must be kept and transcript of cancellations furnished; upon which the postmaster's compensation will be determined."

This regulation was not promulgated by the Department until 1887. Prior to November 16, 1886, as appears in Finding VI, the increase in salary was allowed and paid from the date of the new classification. Thus, the contemporaneous construction of and practice under the act of 1883, was in harmony with the claimant's present contention.

The regulation only expresses the Departmental construction of the act at the time of its promulgation. While it is justly entitled to great consideration, it has not of itself the force of law. It was in consequence of this change of construction and practice in the Department that suit has been brought in this court.

While it is very certain that Congress did not by this legislation intend to change the classification of postmasters, it is not unreasonable to suppose they did intend to increase the compensation of fourth-class post-

masters who, "for four consecutive quarters, are shown to be entitled to a compensation in excess of $250 per quarter," although they might not be immediately appointed to a higher grade. On the contrary, it appears to have been the chief purpose of the proviso and third section to produce that result, for it does not appear that the patrons of the office were to receive any particular advantage by the change.

Postmasters, however appointed, remain postmasters of the office however changed in class by the increase or decrease of its revenues (16 Opinion of the Attorney-General, 18); but salaries depend upon the amount of revenue as ascertained by the Sixth Auditor in the manner prescribed by the statute.

Section 31 of the act of March 3, 1879 (20 Stat., 355), provides that—

"Any person performing the duties of postmaster by authority of the President at any post-office where there is a vacancy for any cause, shall receive for the term for which the duty is performed the same compensation to which he would have been entitled if regularly appointed and confirmed as such postmaster."

The pending case does not technically come within this section, but the act of 1883 is in the same line of remedial legislation.

Judgment for claimant in the sum of $190.

6 V.—*Judgment entered Feb'y* 24, 1891.

At a Court of Claims, held in the city of Washington on the 24th day of February, A. D. 1891, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant and do order, adjudge, and decree that the said William Wilson do have and recover of and from the United States the sum of one hundred and ninety dollars ($190).

BY THE COURT.

7 IN THE COURT OF CLAIMS OF THE UNITED STATES. DEC. TERM, 1890-91.

VI.

WILLIAM WILSON
v.
THE UNITED STATES. } No. 16747.

From a judgment rendered in the above-entitled cause, on the 24th day of February, 1891, in favor of claimant, the defendants, by their Attorney-General, on the 13th day of April, 1891, make application for and give notice of an appeal to the Supreme Court of the United States.

JOHN B. COTTON,
Asst. Attorney-General.

Filed and allowed in open court, April 13, 1891.

WILLIAM A. RICHARDSON,
Chief Justice.

VII.

WILLIAM WILSON
vs.
THE UNITED SATES. } No. 16747.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the judgment of the court, of the application of the defendants for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 29th day of April, A. D. 1891.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsed on cover:) No. 1157. The United States, appellant, vs. William Wilson. Court of Claims. Filed May 8, 1891. 14629.

Office Supreme Court U. S.
FILED.
JAN 21 1892
JAMES. H. M. KENNEY.
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE UNITED STATES, APPELLANT,
vs.
WILLIAM WILSON, APPELLEE.
} No. 1157.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE UNITED STATES, APPELLANT,
vs.
WILLIAM WILSON, APPELLEE. } No. 1157.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT.

This is an appeal from the Court of Claims. The case was decided in February, 1891, and is reported below. (26 C. Cls. R., 186.)

The findings of fact are as follows:

I.

The claimant, William Wilson, was a postmaster of class four, appointed by the Postmaster-General, and duly qualified at Chadron, Nebr., and served as such from July 1, 1885, to January 25, 1887.

January 25, 1887, he was nominated by the President, confirmed by the Senate, and duly commissioned as postmaster of class three.

II.

From October 1, 1886, to January 25, 1887, he was paid at the rate of $1,000 a year, and after that date at the rate of $1,600 a year.

III.

For the four quarters between July 1, 1885, and July 1, 1886, he made returns to the Auditor showing gross receipts amounting to $4,912.99, of which $338.50 was from box rent.

IV.

The Auditor thereupon reported this fact to the Postmaster-General, with a statement showing that the claimant would be entitled, upon these returns, to commissions and box rents amounting to $2,150.85 for the four quarters, being at the rate of $537.71 per quarter.

V.

Thereupon, in the office of the First Assistant Postmaster-General, the following order and entries were made:

OFFICE OF THE
FIRST ASS'T P. M. GENERAL,
SALARY AND ALLOWANCE DIVISION,
August 27, 1886.

Chadron, Neb., Dawes Co.—Brief.

Auditor reports postmaster's compensation, exclusive of money-order commissions, as having reached $250 for four consecutive quarters.

Ordered, That the post-office at Chadron, Neb., be assigned to the third class, and the salary of the postmaster fixed at $1,600 a year, from October 1, 1886.

A. E. STEVENSON,
First Ass't P. M. General.

Sept. 27, '86. Wrote P. M. and Auditor.

VI.

November 16, 1886, an order was issued by the Sixth Auditor, by which postmasters at post-offices changed from fourth class to first, second, or third class were allowed the salary and emoluments of offices of those grades from the date of commission by the President, instead of from the date fixed by the Postmaster-General as that upon which the change of classification should take effect.

Prior to that date the increased salary was paid from the date of the change of the classification.

Judgment was given against the United States for $190. (Rec., p. 5.)

The question presented is, whether a fourth-class postmaster appointed by the Postmaster-General can draw the pay of a third-class postmaster after the office has been assigned to the third class and a salary fixed therefor, but before the postmaster has been commissioned as a third-class postmaster by the President.

Although the amount involved is small it is understood that the question submitted is of considerable importance, as many similar cases are arising, and the officers of the Post-Office Department maintain that the salary and

allowances of a third-class postmaster accrue to the *incumbent* from the date upon which, under the order of the Postmaster-General, the classification is changed; while, under a ruling of the First Comptroller of the Treasury, the auditing officer of the Treasury Department holds that such salary and allowances can be allowed only from the date that a third-class postmaster is commissioned by the President to hold the office.

It is important that this confusion of executive construction shall be ended, and this court is appealed to to give an authoritative construction that shall determine the question.

ASSIGNMENTS OF ERROR.

1. The court erred in holding that the claimant was entitled to compensation at the rate of $1,600 per annum from October 1, 1886, to January 1, 1887.

2. The court erred in holding that a fourth-class postmaster while in charge of an office of the third class, and before he is duly commissioned by the President as a third-class postmaster, is entitled to compensation as a third-class postmaster.

3. The court erred in directing judgment to be entered against the United States.

AS THE CLAIMANT WAS, DURING THE PERIOD FOR WHICH HE SEEKS ADDITIONAL COMPENSATION, ONLY A FOURTH-CLASS POSTMASTER, HE WAS ONLY ENTITLED TO THE COMPENSATION AND EMOLUMENTS OF A FOURTH-CLASS POSTMASTER.

This case rests mainly upon the act of March 3, 1883 (22 Stat., 600).

The first paragraph of this act directs that the respective compensation of postmasters of the first, second, and third classes shall be annual salaries, assigned in even hundreds of dollars, and payable in quarterly payments, to be ascertained and fixed from the quarterly returns for four quarters immediately preceding the adjustment, at the following rates, namely:

(Omitting classes and subdivisions not applicable to the case at bar.)

THIRD CLASS.

> Gross receipts four thousand two hundred dollars, and not exceeding five thousand dollars, salary one thousand six hundred dollars.

It is provided by section 2 that the compensation of postmasters of the fourth class shall be fixed upon the basis of box rents and commissions upon postages, as detailed.

The following clause is made a part of said section:

> *Provided*, That when the compensation of any postmaster of this class shall reach $250 for four consecutive quarters each, exclusive of commissions on money-order business, and when his returns to the

> Auditor for four consecutive quarters shall show him to be entitled to a compensation in excess of $250 per quarter, the Auditor shall report such fact to the Postmaster-General, who will assign the office to its proper class and fix the salary of the postmaster as provided by section 1 of this act.

Section 3 is as follows:

> That the Postmaster-General shall make all orders relative to the salaries of postmasters, and any change made in such salaries shall not take effect until the first day of the quarter next following the order, and the Auditor shall be notified of any and all changes of salaries.

(1) During the period for which Wilson now claims payment he was not a third-class postmaster, but was in the fourth class.

The compensation is given by the statute to the postmaster, not to the post-office. The salary of a third-class postmaster is not to be paid to the incumbent of a third-class office, or to the manager, or incidental master of such an office, it is given by the terms of the act to a *postmaster of the third class.*

One can not become an official of the first, second, or third classes without appointment by the President and confirmation by the Senate.

Wilson seeks the additional compensation because the office has become third class, not because he was a third class postmaster.

He is but a fourth-class postmaster, and section 1 of the act of 1883 has no application to him.

The proviso of section 2 makes no change that inures to Wilson's benefit.

(2) When the compensation for four consecutive quarters is shown to be in excess of the $250 per quarter, the Postmaster-General assigns the office to its proper (the third) class and fixes the salary "as provided by section 1." But section 1 makes no provision for fourth-class postmasters, and therefore it does not affect Wilson.

The Postmaster-General assigns the office to the third-class, but he is not authorized to assign the fourth-class postmaster to the third class.

By section 3 orders relative to salaries shall not take effect *until* the first day of the next quarter.

Ordinarily this would give time for the appointment and confirmation contemplated; but if there is still further delay the increase of the salary can await the coming of the official that shall be authorized to receive it.

(3) The officials of these two classes are not interchangeable in their service, or in law.

One exists officially by the permission of the President and Senate, the other by the direction of the Postmaster-General.

Section 6 of the act of July 12, 1876 (19 Stat., 80), provides that:

> Postmasters of the first, second, and third classes *shall be appointed* and may be removed *by the President*, by and with the advice and consent of the Senate, and shall hold their offices for four years, unless sooner removed or suspended according to law; and postmasters of the fourth class shall be appointed and may be removed by the Postmaster-General.

It will thus be seen that while the Postmaster-General may create the office of third-class postmaster and fix the

salary of the office, he has nothing whatever to do with the matter further, and no one can draw that salary until the President and Senate designate the person who shall be duly commissioned. Up to January 25, 1887, the claimant held office under a commission as a postmaster of the fourth class issued by the Postmaster-General, and was only entitled to the pay of a fourth-class postmaster, not exceeding $1,000 per annum.

This view is emphasized by section 258 of the Postal Regulations (promulgated in 1887), as follows:

> The change and classification from an office of the fourth class to third class takes effect upon the assumption of the duties of a postmaster appointed and commissioned by the President, and until such postmaster takes charge the daily reports of cancellation must be kept and transcript of cancellations furnished, upon which the postmaster's compensation will be determined.

(4) The existing difficulty appears to have grown out of a disregard of the distinction between the creation of a third-class post-office and the authorization of a third-class postmaster. The first is created by the Postmaster-General by virtue of the proviso of section 2 of the laws of 1883.

By the power thus given him, the Postmaster-General, August 27, 1886, converted the post-office at Chadron from a fourth-class post-office to a third-class post-office.

At the same time, by virtue of the third section of the same law, he fixed the salary of a postmaster of the third class for that office whenever the President should see fit to nominate and the Senate to confirm such officer.

The duties of a third-class postmaster at Chadron were performed by a fourth-class postmaster from October 1, 1886, until January 25, 1887, the date of his commission from the President as a postmaster of the third class. He was a fourth-class postmaster and received a fourth-class postmaster's pay until he was created a third-class postmaster on the 25th day of January, 1887.

(5) The court below (p. 5) cites section 31 of the act of March 3, 1879, which provides for compensation for a person performing the duties of postmaster "when there is a vacancy for any cause." A similar provision is included in Regulations, section 458, and is cited against the appellant here.

It is manifest that neither of these references has any bearing whatever upon the question involved in this investigation.

It is respectfully submitted that the judgment entered below should be reversed.

A. X. PARKER,
Assistant Attorney-General.

Supreme Court U.S.
FILED.
JAN 11 1892
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 1157.

THE UNITED STATES, APPELLANT,

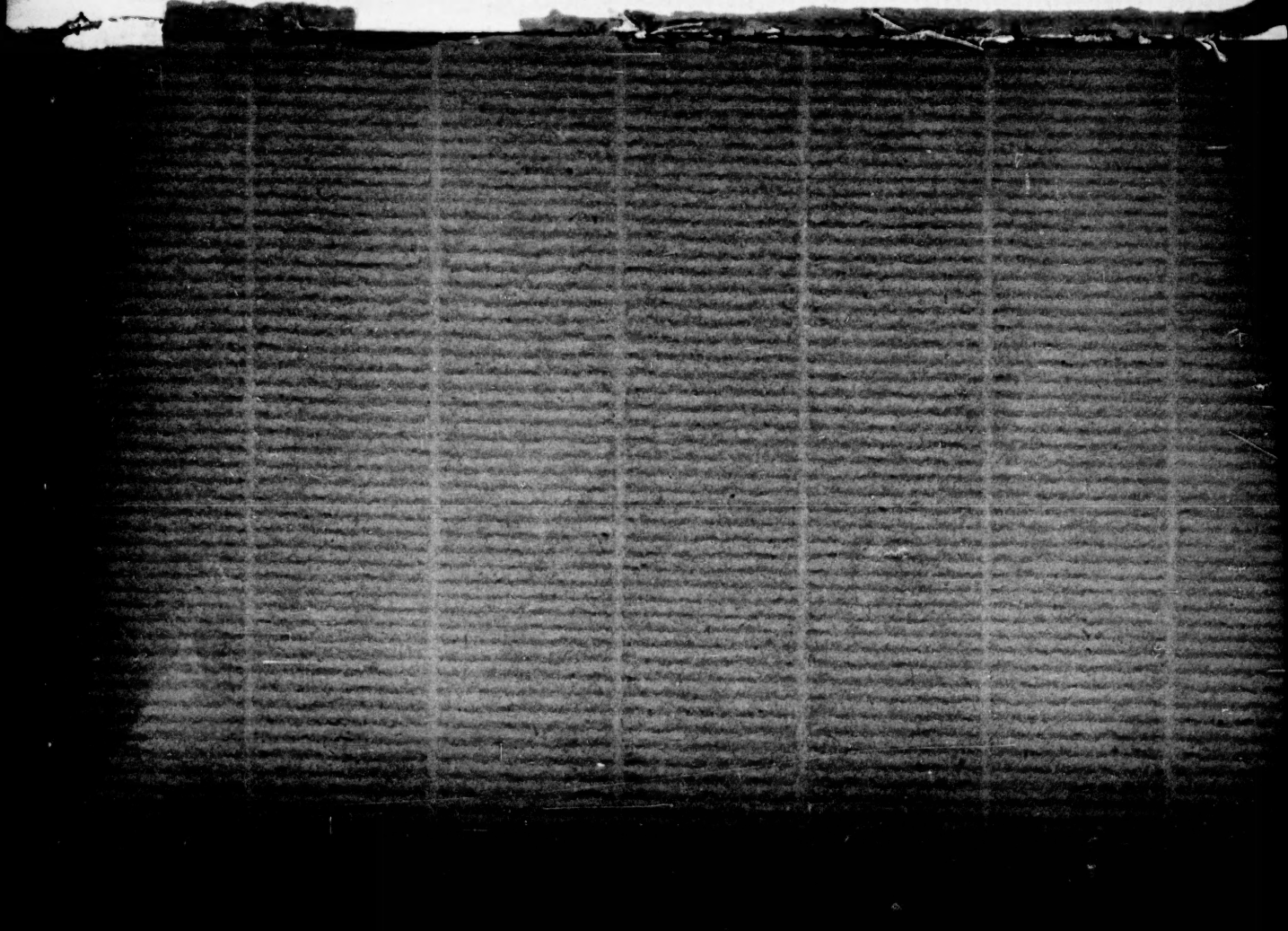
vs.

WILLIAM WILSON, APPELLEE.

BRIEF FOR THE APPELLEE.

HARVEY SPALDING,
Attorney for Appellee.

M. QUEEN, PR.



Supreme Court of the United States.

OCTOBER TERM, 1891.

THE UNITED STATES, Appellant,
vs.
WILLIAM WILSON, Appellee.
No. 1157.

Brief for the Appellee.

The summary of the facts briefly stated in the findings of fact by the Court of Claims is as follows: On the first of July, 1885, William Wilson was a postmaster at Chadron, Nebraska, and his pay being less than $1,000 a year he was appointed by the Postmaster-General as of the fourth class of postmasters. For the four quarters between July 1, 1885, and July 1, 1886, the gross receipts shown by his returns amounted to $4,912.99, of which $338.50 was from box rents, and the commissions upon these returns amounted to $2,150.85, being at the rate of $537.71 per quarter, and these facts were reported by the Auditor to the Postmaster-General, and upon this report on the 27th of September, 1886, the Postmaster-General, by his First Assistant, ordered that the post office at Chadron, Neb., be assigned to the third class and the salary of the postmaster fixed at $1,600 per year from October 1, 1886. But in consequence of an order, first issued by the Sixth Auditor on November 16, 1886, the claimant was paid a salary at the rate of $1,000 per year only from October 1, 1886, to January 25, 1887, instead of $1,600 per year as ordered by the Postmaster-General, the difference between the amount ordered by the Postmaster-

General and the amount paid by the Auditor being $190. The court entered a judgment for the claimant for the $190 against the United States and from this judgment an appeal has been taken to this court. (Record, pp. 2, 3, 5.)

The immediate statute under which this case arises is the act of March 3, 1883 (22d Stats. pages 600 to 602). Section 1 of this act provides "That the respective compensation of postmasters of the first, second and third classes shall be annual salaries assigned in even hundreds of dollars and payable in quarterly payments, ***to be ascertained and fixed by the Postmaster-General*** from their respective quarterly returns to the Auditor of the Treasury for the Post Office Department or copies or duplicates thereof to be forwarded to the First Assistant Postmaster-General for four quarters immediately preceding the adjustment at the following rates, namely:

FIRST CLASS.

All offices with gross receipts of $40,000 and upwards are assigned to the first class with salaries from $3,000 to $6,000 per year, according to such receipts.

SECOND CLASS.

All offices with receipts of $8,000 to $40,000 per year are assigned to the second class with salaries from $2,000 to $2,900 per year, according to such receipts.

THIRD CLASS.

All offices with receipts from $1,900 per year to $8,000 per year are assigned to the third class with salaries from $1,000 to $1,900 per year, according to such receipts.

The salaries of this class are graded according to receipts, as follows: Gross receipts $1,900 and not exceeding $2,100, salary $1,000; gross receipts $2,100 and not exceeding $2,400, salary $1,100; gross receipts $2,400 and not exceeding $2,700, salary $1,200; gross receipts $2,700

and not exceeding $3,000, salary $1,300; gross receipts $3,000 and not exceeding $3,500, salary $1,400; gross receipts $3,500 and not exceeding $4,200, salary $1,500; ***gross receipts $4,200 and not exceeding $5,000, salary $1,600;*** gross receipts $5,000 and not exceeding $6,000, salary $1,700; gross receipts $6,000 and not exceeding $7,000, salary $1,800; gross receipts $7,000 and not exceeding $8,000, salary $1,900.

FOURTH CLASS.

The compensation of this class is provided by graduated commissions upon the postages added to all the box rents. The rate of commissions upon each quarter's postages prescribed by this section is as follows: "On the first $50 or less per quarter, 100 per centum; on the next $100 or less per quarter, 60 per centum; on the next $200 or less per quarter, 50 per centum and on all the balance 40 per centum, the same to be ascertained and allowed by the Auditor of the Treasury for the Post Office Department in the settlement of the accounts of such postmasters upon their sworn quarterly returns, ***provided, that when the compensation of any postmaster of this class shall reach $250 for four consecutive quarters each, exclusive of commissions on money order business, and when the returns to the Auditor for four consecutive quarters shall show him to be entitled to a compensation in excess of $250 per quarter, the Auditor shall report such fact to the Postmaster-General, who shall assign the office to its proper class and fix the salary of the Postmaster as provided by Section 1 of this Act.***

Section 3 of this act reads as follows: "That the Postmaster-General shall make all orders relative to the salaries of postmasters, and any change made in such salaries shall not take effect until the first day of the

quarter next following the order, and the Auditor shall be notified of any and all changes of salaries."

As the statute of March 3, 1883, from which the foregoing quotations and statements are made is absolutely conclusive of the right of the appellee to the salary of $1,600 per year from October 1, 1886, when applied to the facts of record, in as much as both the Auditor and the Postmaster-General complied exactly with the requirements of the statute in the proceeding by which the salary was fixed at $1,600 per year from October 1, 1886, the points relied upon in defense seem to be obscure. However, in the court below, the appellant cited section 80 of the act of June 23, 1874 (18 Stats., page 234) and section 6 of the act of July 12, 1876 (19 Stats., page 80) by way of defense. These sections of the cited statutes simply provide for the appointment of first, second and third-class postmasters by the President and of fourth-class postmasters by the Postmaster-General with provisions as to tenure of offices. The citation of these statutes impliedly assumes that the classification of postmasters controls their salary and that the President in the exercise of his jurisdiction of appointment also exercises control over the salaries of the appointees.

Section 63 of the act of June 8, 1872, as amended by section 11 of the act of June 23, 1874 (18 Stats., page 233), reads as follows:

"That the postmasters, except the postmaster at New York City, whose annual salary is hereby fixed at $6,000, shall be divided into four classes as follows: The first class shall embrace all those whose annual salaries are not more than $4,000 nor less than $3,000; the second class shall embrace all those whose annual salaries are less than $3,000 but not less than $2,000; the third class shall embrace all those whose annual salaries are less than $2,000 but not less than $1,000; the fourth class shall embrace all postmasters whose annual compensation exclusive of the commissions on the money order business of their offices amounts to less than $1,000."

Section 5 of the act of July 12, 1876 (19 Stats., page 80), is identical with the section of the act just quoted except the first provision as to first-class offices is modified so as to read as follows:

"The first class shall embrace all those whose annual salaries are $3,000 or more than $3,000."

The statutes cited show that the compensation of postmasters determines the class and that the amount of postal receipts determines the compensation. When the amount of receipts determines the compensation to be less than $1,000 per year this fact makes the office a fourth-class office and the Auditor in all such cases is required to ascertain the amount of the compensation by graduated commissions prescribed by the statute upon each quarterly return. These graduated commissions show that when the total postages reach $1,900 per year, the office passes from the fourth class to the third class, because the graduated commissions on four quarterly returns showing the aggregate receipts to be $1,900, exceed $1,000 per year. Thus the commissions on $450 of postages in one quarter prescribed by the statute are as follows: On $50, $50; on $100, $60; on $200, $100, and on $100, $40, so that the total commissions on $450 is $250. Accordingly the statute places all post offices, the annual receipts of which are $1,900 and not exceeding $8,000 in the third class. Consequently the Auditor, under the statute, can not ascertain the salary of a postmaster at a post office the receipts of which for a prior year amount to $1,900 or more, and he is required by the proviso of section 2, of the act of March 3, 1883, to report every such case to the Postmaster-General, in order that the Postmaster-General may ascertain the salary from the amount of postages received at that office for the year previous. It will be seen that the Postmaster-General has no discretion in such a case, for he is required

to name the salary as indicated by the receipts, and as the receipts in this case were $4,912.99 for the year, being a sum between $4,200 and $5,000, the statute required the Postmaster-General to fix the salary at $1,600 per year from the first day of October, 1886, that being the first day of the quarter next succeeding the order. By operation of law this order of the Postmaster-General made the claimant's post office a third-class post office from October 1, 1886, and by operation of law the claimant became a third-class postmaster at a third-class post office on that date. The action of the Postmaster General and the action of the Auditor having each been had in pursuance of an order of the statute, such action was as effective in fixing the compensation and class of the claimant as if the class and compensation had been expressly determined by the terms of the statute. The Auditor can not ascertain the salary of postmasters whose receipts are over $1,900 per year, and the Postmaster-General can not ascertain the salaries of postmasters whose receipts are below $1,900 per year, and the Postmaster-General alone has authority to ascertain the salaries of postmasters whose receipts are more than $1,900 per year. The President has no authority, whatever, to ascertain or control the salary of any postmaster of any class, but he has authority to appoint postmasters at post offices at which the Postmaster-General has ascertained the salaries to be $1,000 per year and upwards. It is manifest that neither the President nor the Auditor has power to change the salary of the claimant, and that the ascertainment of his salary having been made in strict conformity to the statute and fixed accordingly at $1,600 per year from October 1, 1886, the same is absolutely conclusive as to the amount of his salary. It is plain that the judgment of the Court of Claims in favor of the claimant for $190, it being the difference between the claimant's salary as fixed by law from October 1, 1886,

to January 25, 1887, and the salary paid him, is without error.

From July 1, 1874, to November, 1886, a period of more than 12 years, the authority of the Postmaster-General to ascertain and fix the salaries of postmasters of the fourth class becoming third class from the first day of the quarter next succeeding his order upon the subject was absolutely beyond dispute because that provision in plain terms was embodied in the statutes. The Postmaster-General could make his order in no other terms under the statute. His order as to its effect was above and beyond all conditions. His authority never was disputed and the statute never was disregarded until in November, 1886, the Auditor, an officer having no authority or jurisdiction whatever, made an order disregarding the statute and in violation of the statute and the orders of the Postmaster-General made in pursuance thereof. Some reference in the court below was made to an alleged regulation subsequently made, but a regulation is but an order of the Postmaster-General and any order of the Postmaster-General is overruled by the expressed terms of the statutes as well as by his own orders made subsequent to the regulation. This regulation, in the nature of the case, could neither supervene other orders of the Postmaster-General made in conformity to the statutes nor the statutes themselves.

There is no ground whatever upon which to assert that a third-class postmaster at a third-class post office must be paid the commissions of a fourth-class postmaster at a fourth-class post office, because not formally appointed by the President. In the nature of the case no third-class postmaster can be thus paid, for every postmaster under the statute is paid upon the receipts of his office and if the receipts be the receipts of a third-class office, the pay is necessarily the pay of a third-class office and if the receipts be the receipts of a fourth-class office the

pay is necessarily the pay of a fourth-class post office. When the receipts of a fourth-class post office advance to the limit fixed in the statute of a third-class post office, the method of computing the pay of a fourth-class postmaster can be no longer applied to that office. To illustrate: The commissions of a fourth-class postmaster upon the receipts of a quarter amounting to $450 are $250 for that quarter because he is allowed $50 on the first $50 of receipts and $60 on the next $100 of receipts, and $100 on the next $200 of receipts, and $40 on the next $100 of receipts. It is therefore plain that when the receipts for one year reach $1,900, this fact places the office in the third class and the duties required of the Auditor and the Postmaster-General in such a case simply constitute a recognition of this fact. And the statute itself in terms takes all offices the receipts of which amount to $1,900 or more out of the fourth class and out of the jurisdiction of the Auditor.

It is plain that a postmaster appointed by the Postmaster-General to a fourth-class post office is still postmaster by authority of law when such office by increased receipts becomes third class and when accordingly the Postmaster-General ascertains and fixes his salary in conformity to the statute. If such postmaster remains in office he so remains by authority of the President as well as by authority of the Postmaster-General.

If a second-class postmaster at a second-class post office becomes after his appointment by the President a fourth-class postmaster at a fourth-class post office by reason of rapid decrease of receipts it is plain that he can only receive the compensation of a fourth-class postmaster, although he was not appointed by the Postmaster-General, for in such a case the pay of a second-class postmaster can not be ascertained and fixed upon the receipts of a fourth-class post office. The pay of fourth-class postmasters being always ascertained upon the receipts, vary from $1 per year to $1,000 per year at which point they

become third class. As to these postmasters the appointing power is with the Postmaster-General. The salaries of other classes of postmasters being ascertained and fixed upon the office receipts vary from $1,000 per year to $6,000 per year, and as to such classes the appointing power is with the President. In no case is the class of the postmaster specified in the commission. The fact that the Postmaster-General appoints shows that the appointee is a fourth-class postmaster. The fact that the President appoints shows that the appointee when appointed belongs either to the first, second or third class. The President has no jurisdiction to appoint until the Postmaster-General determines the class by the ascertainment and fixation of the salary. That is, it must be thus shown that the appointee is of the first, second or third class or the jurisdiction of the President does not attach. The statutes upon this subject are plain and mathematically conclusive.

In a note to section 440 of the postal regulations of 1887 an opinion of the Attorney-General of October 14, 1885, is cited. In this opinion the Attorney-General holds "When a post office of the first, second or third class ***is assigned*** to the fourth class, the effect of such ***assignment*** is to abolish the office as a Presidential office and the term of the postmaster appointed by the President, by and with the advice and consent of the Senate, ceases, and the Postmaster-General is required to appoint a postmaster."

Thus it is that the defendant through the highest law officer declares that ***the assignment*** of a post office from one of the higher classes to the lowest class ends the tenure of office of the incumbent which otherwise would continue for four years. In effect, this opinion makes the receipts and the compensation to control the appointing power as well as the tenure of office in certain cases. Under this declaration the defendant must concede that a salary assigned and fixed by the Postmaster-General in

conformity to law places that salary beyond the control of the Executive branch of the Government.

In the same regulations, section 31 of the act of March 3, 1879, 20th Stats., page 362, is published as follows:

"Section 458, compensation of postmasters *pro tem.* Any person performing the duties of postmaster by authority of the President at any post office where there is a vacancy for any cause shall receive for the term for which the duty is performed the same compensation to which he would have been entitled if regularly appointed and confirmed as such postmaster, and all services heretofore rendered in like cases shall be paid for under this provision."

It is clear that no person can be recognized as postmaster by the Postmaster-General at a Presidential office without conceding the fact that such person performs the duties of said office by authority of the President. It is equally plain that the assignment of claimant's post office by the Postmaster-General on the first day of October, 1886, constituted the claimant's post office a Presidential post office. It follows that if he was not after October 1, 1886, by operation of law, a third-class postmaster, he was in fact filling a vacancy in such an office by authority of the President, and in either case he is entitled to the salary of $1,600 per year after October 1, 1886.

The record shows that the method prescribed by the statute for the transfer of fourth-class post offices becoming third class from the Auditor to the Postmaster-General, limited claimant's compensation to $250 per quarter for the five quarters between July 1, 1885, and October 1, 1886, whereas the commissions amounted to $531.71 per quarter. Under such circumstances to deny him the salary from October 1, 1886, of $400 per quarter, which was fixed in complete conformity to the statute, is not only a violation of law, but an inexcusable wrong.

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